IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7151 of 2001

with

SPECIAL CIVIL APPLICATION No 7155 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MIR ROSHANIBEN JASUBHAI

Versus

ADDITIONAL DIRECTOR

Appearance:

1. Special Civil Application No. 7151 of 2001
   MR JV JAPEE for Petitioner No. 1
   MR MK PATEL, AGP, for Respondent No. 1-3
2. Special Civil Application No. 7155 of 2001
   MR JV JAPEE for Petitioner No. 1
   MR MK PATEL, AGP, for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2002

COMMON ORAL JUDGEMENT

In both these petitions challenge is levelled against the Government Resolution dated 13-1-1987 providing for district-wise selection of candidates for admission to Diploma in General Nursing at the nursing schools being run at the headquarters of various districts in the State of Gujarat.

2. Additional Director, Health and Medical Services, Gujarat State - respondent No.1 herein, published an advertisement on 13-7-2001 inviting applications for admission to Diploma in General Nursing and Midwifery Training Course to fill in 370 seats in 9 nursing schools in different districts of the State. Admissions are to be granted on the basis of the marks obtained at the HSC examination. The advertisement was for granting admissions for the academic year 2001-02. The petitioners also applied for admission to the said course for Sabarkantha district. The petitioners' grievance herein is that although the petitioners had obtained 75.83% and 77.83% marks respectively at the HSC examination, their names were not included in the merit list for Sabarkantha district. The petitioners were left out by a narrow margin in the quota reserved for Socially and Educationally Backward Class candidates (SEBC) in Sabarkantha district. Several candidates belonging to SEBC communities who had obtained less marks than the petitioners at the HSC examination were included in the merit lists for other districts. For instance, in Banaskantha district (in Palanpur) admission was given to student with 71% marks. In Surendranagar district, admissions stopped at 65/66%, in Rajkot, at 68% and in Bhuj at 65%. The petitioners' case is that such an anomaly has occurred on account of preparation of district-wise merit lists instead of State-wise merit list. It is submitted that only merit should be the criterion for admission to Diploma in General Nursing course and there should be State-wise merit list for each category like SEBC, SC, ST etc. otherwise candidates with higher marks will be left out in their own districts and less meritorious candidates will be included in the merit lists of other districts.

3. At the hearing of these petitions, Mr Japee has raised the following contentions:-

(i) The object of the selection process can be only to select the best talent for admissions to

nursing schools, and, therefore, State-wise selection with uniform assessment made by the Gujarat Higher Secondary Education Board can be the only basis for giving admissions to Diploma in Nursing course in a reasonable and rationale manner and that district-wise allocation is arbitrary and discriminatory.

Strong reliance is placed on the decisions of the Apex Court in P. Rajendran vs. State of Madras, AIR 1968 SC 1012 (paragraphs 11 and 13) and in A. Periakaruppan vs. State of Tamilnadu, AIR 1971 SC 2303.

(ii) Secondly, it is submitted that for filling in seats reserved for Scheduled Castes/ Scheduled Tribes, the rules provide for preparation of State-wise merit list and they are given admissions to the nursing schools of their choice in the State but the candidates belonging to SEBC communities and the general category candidates are not given the same treatment which is given to SC/ ST candidates and, therefore, there is discrimination against the candidates belonging to SEBC communities and the general category candidates.

(iii) In all other training courses, namely, pharmacy, medical and engineering, State-wise merit list is prepared for admissions. There is no justification for not according the same treatment to the admission process for the nursing course.

4. On the other hand, Mr MK Patel, learned AGP for the respondents has submitted that the resolution is in force since 1987 and has stood the test of time for the last 15 years. It is further submitted that the object of the admission process is not merely to select the best talent but ultimately the Government's aim is to see that adequate number of trained nurses are available for appointment in hospitals and dispensaries all over the State. It is submitted that when the centralised admission was given, the candidates from major towns like, Ahmedabad, Baroda, Surat and Jamnagar which places also have teaching hospitals were getting admissions on the basis of high percentage at the qualifying examination. However, after passing out the nursing examination, when it came to employment, they preferred to be employed in such major towns only with the result that districts with headquarters which were not major

towns remained without services of adequate number of trained nurses. It was in order to obviate this situation that the Government issued the Resolution dated 13-1-1987 providing for district-wise selection and the system has been working satisfactorily for the last 15 years.

Mr Patel learned AGP has also relied on the averments made in the reply affidavit filed by Under Secretary to the State Government in the Health & Family Welfare Department that earlier it was observed that persons belonging to Scheduled Castes and Scheduled Tribes were not evenly distributed in the State and they were predominantly found in just a few districts. As seats are distributed district-wise on the basis of the available strength of each institute, it was found that a large number of seats reserved for Scheduled Castes and Scheduled Tribes in some districts were lying vacant, whereas, in other districts on account of limited number of seats reserved for candidates belonging to Scheduled Castes and Scheduled Tribes, they were deprived of a fair chance of admission. It was in order to implement the policy of the State Government to make effective provision for reservation for Scheduled Castes and Scheduled Tribes and to see that the actual benefit of this reservation policy goes to the SC and ST candidates that the Government has provided for State-wise list for the seats reserved for Scheduled Castes and Scheduled Tribes so as to see that the aforesaid imbalance is taken care of. As against the above factual position, it was found that the SEBC communities are evenly distributed all over the State and, therefore, the general policy of preparing the district-wise merit list has been applied to seats reserved for SEBC communities just as is provided for the general category candidates. It is also submitted that earlier the reservation for SEBC communities was only 10% which has been increased to 27% vide Government Resolution dated 12-7-1994. Hence out of those increased seats, reservation is provided for orphans, widows, deserted women and committed girls but only one seat is reserved for the said category at each institute.

As regards the last submission made on behalf of the petitioners that State-wise merit list is prepared for pharmacy, medical and engineering courses, it is submitted that it is for the State Government to decide as a matter of policy as to in which course State-wise merit list is to be prepared and for which course district-wise merit list is to be prepared. It is submitted that for admissions to Primary Teachers

Certificate course run by various institutes in the State, the Government has provided for district-wise merit list. The pharmacy colleges, medical colleges and engineering colleges are not available in all districts and such colleges are available only in a few districts. Moreover, the State Government has been providing grant for running PTC colleges and nursing schools in order make a large number of primary teachers and nurses available in all districts so as to make the services of qualified teachers and qualified nurses available at the grass root level.

5. Having heard the learned counsel for the parties, the Court does not find any constitutional infirmity in the admission procedure for admission to the Diploma course in nursing training. As such there are no statutory rules governing the field and, therefore, it is open to the State Government to provide the admission procedure to the above course through executive instructions. The justification given by the State Government for providing district-wise merit list as per the Government Resolution dated 13-1-1987 appears to be quite convincing.

6. It is true that a controversy somewhat similar to the one raised in the present petition was also raised before the Hon'ble Supreme Court in P. Rajendran vs. State of Madras, AIR 1968 SC 1012 and in A. Periakaruppan vs. State of Tamilnadu, AIR 1971 SC 2303. The Apex Court struck down the admission rules providing for district-wise admissions to the MBBS course on the ground that the object of selection can only be to secure the best possible material for admission to colleges subject to the provision for socially and educationally backward classes. Whatever be the course, the object of selection must be to secure the best possible talent from the concerned source and the object of selection would be frustrated if the seats are allotted district by district.

However, the aforesaid decisions are not applicable to the present controversy. In the first place, the respondents have made it clear that the purpose of granting admissions is not only to select the most meritorious students in the State but the object is ultimately to provide for qualified nurses who are available for appointment in hospitals/ dispensaries all over the State.

7. Mr Japee for the petitioners would, of course, urge that a similar argument was urged before the Hon'ble

Supreme Court in P. Rajendran vs. State of Madras (supra), particularly in para 13 of the said judgment, and since a similar contention was rejected, it is not open to the respondents to plead any such defence.

It is, however, required to be noted that the Hon'ble Supreme Court rejected such an argument of the State Government on the ground that such a defence was not raised in the affidavit filed on behalf of the State of Madras and there were no facts and figures to suggest that candidates from a particular district would by and large settle down in that district. The material before the Hon'ble Supreme Court also showed that candidates had a large number of districts to choose from depending upon where they think that their chances are best and, therefore, the Hon'ble Supreme Court rejected the argument that district-wise allocation is justifiable on such a ground.

8. However, in the facts of the instant case, the Court has called for perusal the files of the respondent - authorities. On perusal of the files, the Court has found that the object of introducing the policy of district-wise admissions way back in the year 1987 was the experience that the candidates hailing from a particular district who secure admissions to the nursing school in the same district are likely to accept employment in the same district and the Government hospitals and dispensaries in that district would get qualified nurses. Prior to 1987, the preparation of the State-wise merit list had created a situation where a number of districts had remained without services of adequate number of qualified nurses. A perusal of the Government files, therefore, substantiates the submission made by the learned AGP. The Court would also like to take notice of the fact that the same policy of preparation of district-wise merit list for admissions to PTC course (Primary Teachers Certificate course) also lends support to the submission made on behalf of the Government that such a policy is necessary for making the services of qualified teachers and qualified nurses available at the grass root level in all the districts. The Court would also like to take judicial notice of the fact that there are litigations about transfer of primary teachers who belong to certain districts. Earlier on the basis of a State-wise merit list, they secured admissions to PTC course in other/ backward districts but after getting employment in those/ backward districts there was an exodus of transfer applications by such primary teachers for being transferred to their home districts and a large number of backward districts in the State

remained without the services of adequate number of primary teachers. In this connection, reference may be made to the order dated 22-10-2002 passed by this Court in Special Civil Application No.7800 of 2002 and cognate petitions.

In view of the aforesaid scenario, the Court finds that there is sufficient justification for the change introduced by the Government in the policy regarding admission to the Diploma in Nursing Course as per the Government Resolution dated 13-1-1987.

9. As regards the alleged discrimination between the Scheduled Caste and Scheduled Tribe candidates on the one hand and the other candidates on the other hand, the affidavit filed on behalf of the State Government gives sufficient justification that Scheduled Castes and Scheduled Tribes are not evenly distributed in the State and that they are predominantly to be found in a few districts and that district-wise merit list for Scheduled Castes and Scheduled Tribes created an imbalance which was required to be redressed by providing for State-wise merit list for Scheduled Caste candidates and Scheduled Tribe candidates. On the other hand, general category candidates as well as socially and educationally backward class communities are to be found evenly throughout the State and, therefore, for them district-wise selection has been resorted to.

10. As regards the contention that State-wise merit lists are prepared for admissions to medical colleges, pharmacy colleges and engineering colleges, the argument has to be stated only to be rejected. Each district in the State does not have a medical college, engineering college and a pharmacy college. Very few districts in the State have the educational institutions running such courses and, therefore, preparation of district-wise merit list for admission to such professional courses can not be resorted to.

12. In view of the above discussion, there is no merit in these petitions and the petitions are, therefore, dismissed.
Rule is discharged with no order as to costs.

(M.S. Shah,J)
zgs/-